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CHARLES ELMORE CROPLEY
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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM

No. ~~30~~ 42

FRANCIS BEIDLER, II, AND GEORGE ENGELKING,
AS EXECUTORS OF THE LAST WILL AND TESTAMENT OF
FRANCIS BEIDLER, PLAINTIFFS IN ERROR,

vs.

SOUTH CAROLINA TAX COMMISSION,
DEFENDANT IN ERROR

Argument in Reply Submitted by Counsel for Plaintiffs in Error.

ARTHUR B. SCHAFFNER,
P. F. HENDERSON,
HENDERSONS & SALLEY,
Attorneys for Plaintiffs in Error.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM

No. 39

FRANCIS BEIDLER, II, AND GEORGE ENGELKING,
AS EXECUTORS OF THE LAST WILL AND TESTAMENT OF
FRANCIS BEIDLER, PLAINTIFFS IN ERROR,

vs.

SOUTH CAROLINA TAX COMMISSION,
DEFENDANT IN ERROR

Argument in Reply Submitted by Counsel for Plaintiffs in Error.

We desire to call especial attention to the fact that counsels' argument commits them definitely to the contention that the Blackstone decision establishes the doctrine that in every case of a decedent creditor domiciled in one state and a debtor domiciled in a second state that Inheritance Taxation (given the necessary legislation) will automatically follow in both states. We have shown definitely that the highest Courts of New York, Massachusetts, Minnesota and South Carolina have ruled to the contrary.

We further specificially call attention to the fact that the Supreme Court of South Carolina ruled to the contrary in the Beidler decision. At p. 108 of Record, the Court said,—"If the case falls within the rule announced in the Fuller case, there can be no doubt of the correctness of appellants contention." Then after much argument they conclude (p. 10) that in the Beidler case *"resort to the Courts and laws of South Carolina was inevitable."*

Liverpool Ins. Co. vs. Assessors, 221 U. S. 346

This decision along with the Blackstone decision is counsel's chief reliance. We submit to the contrary that it fully supports our contention that there can be no tax in the state of the debtor *unless special circumstances are present to justify the tax*. In the Liverpool case we find that the property taxed were credits arising out of business done and completed in Louisiana, and that (221 U. S. p. 349) *"said credits are due in this state."* Reference to 122 Louisiana 98 confirms this fact. The credits taxed were due to be paid in Louisiana by residents of that state. Hence they could reasonably be collected nowhere else. With these facts before it this Court said:

> "The legal fiction, expressed in the maxim *mobilia sequuntur personam*, yields to the fact of *actual control* elsewhere. And in the case of credits, though intangible, *arising as did those in the present instance*, the control adequate to confer jurisdiction may be found in the sovereignty of the debtor's domicile."

Again this case was primarily a business situs case for the Court was careful to rule,—

> "We are not dealing here merely with a single credit or a series of separate credits, *but with a business*. The insurance company chose to enter into the business of lending money within the State of Louisiana, and employed *a local agent* to conduct that business."

The other cases cited by counsel simply quote the Blackstone decision to the general effect as stated in the Baker case, 243 U. S. 394-401, that "the state of the debtors domicile may impose a succession tax"; meaning of course, we submit, when the circumstances of the given case justify it.

Replying to other points made, we submit,

(1) Counsel submits that if the tax is not allowed in this case that there would be a case of no tax even in the State of creditor's domicile, in a supposed instance of a deceased creditor and a debtor, both residents of South Carolina, if the administrator of the decedent resorted to the Courts of North Carolina to collect the debt. We submit that this situation could never arise because under Blodgett vs. Silberman there will always be a tax in the deceased creditor's state. Her succession laws are of necessity resorted to in order to transfer for title to the debt from the dead to the living.

(2) Counsel next refers to the case of corporations maintaining transfer offices in other states. His illustration is probably likewise fallacious because in the Baker case, supra, this Court has recognized the fact that the laws of the state which has created a corporation always control the transfer of her stock.

(3) Counsel contends that the coming into this state of the Beidler Executors to pay the tax on the stock and to contest the payment of the tax on the debt amounted to the taking out of ancillary letters in South Carolina and subjects the estate to the tax.

We submit that this contention presents a complete disregard of the whole theory of Inheritance Tax Laws. The tax is earned in the creditors state only if resort must be had to her laws or Courts to complete the devolution of the title of the property from the dead to the living, *or to collect the debt.* If counsels position were otherwise sound; even applying for

ancillary letters by the state or by the Beidler Estate for purposes other than the collection of the debt or some such kindred purpose, would not confer the tax.

Besides this the Record (p. 2) shows that the Beidler Estate involuntarily filed the affidavit *required of them* and specifically claimed therein "that the two items" of debt "were not taxable. A special appearance only was made.

Illinois adheres to rule of Wilkins vs. Ellett.

It is definitely ruled in Hickox vs. Frank, 102 Ill. 660 and in Ramsay vs Ramsay, 97 Ill. App. 270, that a Domiciliary Executor in Illinois has title to all the property of a decedent wherever physically situated and specifically that such domiciliary executor has title in Illinois to a debt due to the decedent by a resident of another state. This is in line with the majority rule established by this Court in Wilkins vs. Ellett and is diametrically opposed to the doctrine adhered to by the South Carolina Courts.

Hence upon Mr. Beidler's death his Executors had title in Illinois to the debt due by the Santee Company, which had been advanced from Mr. Beidler's office in Chicago and was being repaid thereto. Neither these executors nor the heirs needed the aid of the South Carolina Courts to confer title upon them.

Respectfully submitted,

ARTHUR B. SCHAFFNER,

P. F. HENDERSON,

HENDERSONS & SALLEY,

Attorneys for Plaintiffs in Error.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1928.

No. 39 & 2

FRANCIS BEIDLER, II, AND GEORGE ENGELKING, AS EXECUTORS OF THE LAST WILL AND TESTAMENT OF FRANCIS BEIDLER, PLAINTIFFS IN ERROR,

vs.

SOUTH CAROLINA TAX COMMISSION.

SUPPLEMENTARY ARGUMENT OF P. F. HENDERSON AND HENDERSONS & SALLEY FOR PLAINTIFFS' IN ERROR.

Mr. Justice Brandeis asked a question, during the argument herein, to which we ask to be allowed to put our answer in concrete form.

He cited the fact that under the garnishment or attachment laws a debt might be impounded in the hands of the debtor at his domicile, and suggested that this fact proved that the debt was therefore *property* in the State of the domicile of the debtor, and that this was a

sufficient reason for allowing an inheritance tax in that State.

We answer by supposing that the debtor were a corporation doing business in, say, ten States and owning sufficient property in each to pay the debt, certainly it could not be said that each of these States could impose the tax upon the creditor's death. Or, in Balk *vs.* Harris, 198 U. S., 215, it was held that the debt due by a resident of North Carolina might be attached in Maryland while he was casually in that State. Surely in case the creditor died, each State which the debtor might visit could not claim an inheritance tax. Again, in the Balk case this Court made it perfectly plain that what is impounded in attachment proceedings is not property, in the taxable sense of the word, but merely the debtor's obligation to pay. Said the Court:

> "We do not see the materiality of the expression 'situs of the debt,' when used in connection *with attachment proceedings.* * * * The obligation of the debtor to pay his debt *clings to and accompanies him wherever he goes.* He is as much bound to pay his debt in a foreign State when therein sued * * * as he was in the State in which the debt was contracted." (Italics added.)

What is impounded, we submit, is not property, but the obligtion to pay, and it may be impounded in many States. Surely all of these States could not levy the tax.

Hence we earnestly submit that the true rule involved in the Blackstone case is that there can be no inheritance tax in any State other than the domicile of the creditor, unless that other State can affirmatively show that her laws alone are necessarily involved in the transfer. This rule alone squares with the Gordon, the Bliss, the Chadwick, and the Fuller decisions.

Respectfully submitted,

P. F. HENDERSON,
HENDERSONS & SALLEY,
Counsel for Plaintiffs in Error.

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